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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DOREEN E. CHRISTIAN, individually and on)
 behalf of all others similarly situated,)
)
 Plaintiff,)
)
)
 v.)
)
)
 AMERICAN STERLING BANK, and DOES 1)
 through 10 inclusive,)
)
 Defendants.)

CASE NO. 08-CV-0090 LAB (RBBx)
[Assigned to the Hon. Larry A. Burns]
CLASS ACTION
EX PARTE APPLICATION FOR LEAVE TO
TAKE CLASS DISCOVERY AND
SUPPORTING MEMORANDUM OF POINTS
AND AUTHORITIES; AND DECLARATION
OF MARCUS J. JACKSON

1 TO THE HONORABLE COURT:

2 Plaintiff, DOREEN E. CHRISTIAN, applies *ex parte* for an order permitting Plaintiff to take
3 discovery of current or former officers, executives and employees of Defendant AMERICAN
4 STERLING BANK (“Defendant”), or other persons or entities, who may have information concerning
5 the Option ARM loans sold by Defendant during the putative Class Period (from January 15, 2008 to the
6 date the Court certifies this action to proceed as a class action).

7 This application is made on the ground that discovery concerning the ARM loans Defendant sold
8 to Plaintiff and the Class members during the putative Class Period is necessary in order to determine:
9 (1) the number of Option ARM loans Defendant sold to borrowers during the liability period; (2) the
10 identity and location of such subsequent purchasers and/or assignees of the Option ARM loans
11 Defendant sold during the liability period; and (3) the location of loan documents and other relevant
12 information concerning Defendant’s loan practices during the liability period.

13 This application is based on this *ex parte* application, the attached memorandum of points and
14 authorities, the Declaration of Marcus J. Jackson, and the complete file and records of this case.

16 **MEMORANDUM OF POINTS AND AUTHORITIES**

17 **I. INTRODUCTION AND OVERVIEW OF PLAINTIFF’S CLASS CLAIMS**

18 Plaintiff and hundreds, if not thousands, of consumers are in imminent threat of losing their
19 homes due to Defendants’ misleading and deceptive Adjustable Rate Mortgages (hereafter “ARM
20 loans.”) See First Amended Complaint (“FAC”), ¶ 38. In fact, in a case concerning substantially
21 similar issues, one court has already issued a preliminary injunction without a bond based upon
22 “Plaintiffs strong showing of their likelihood of success on the merits.” Avila v. Stearns Lending, Inc.
23 2008 WL 1378231, at *2 (CD Cal. April 7, 2008) (Not Reported in F.Supp.2d.)

24 This consumer fraud class action has been brought against Defendant AMERICAN STERLING
25 BANK, and DOES 1 - 10, for their deceptive and unfair practices in connection with the sale and
26 servicing of Defendant’s ARM loans. In particular, Plaintiff’s class claims seek to redress Defendant’s
27 failure to disclose important material facts concerning the ARM loans they sold to Plaintiff and the
28 putative Class members. As such, this consumer fraud class action is primarily based on Defendant’s

failure to disclose important material facts relating to the ARM loans Defendant sold to Plaintiff and all others similarly situated. Poulos v. Caesars World, Inc. (9th Cir.2004) 379 F.3d 654, 667; Binder v. Gillespie (9th Cir.1999) 184 F.3d 1059, 1064.

Plaintiff and the putative class members (“Plaintiffs”) are consumers who applied for a primary residence mortgage through Defendant. FAC, ¶¶ 2-5, 22. Defendant sold Plaintiff and the Class members Option Arm Loans. FAC, ¶ 19. In selling these loans, Defendant’s loan documents promised a low, fixed interest rate, and Plaintiff and the Class members relied upon that promise. FAC, ¶ 23. In reality, the interest rate increased almost immediately after signing.

Defendant’s loan documents also promised that Plaintiffs’ monthly payments would be applied to “Principal and interest.” FAC, ¶ 70, 156. Defendants breached that agreement and never applied Plaintiffs’ payments to principal. FAC, ¶ 157. Defendants further informed Plaintiffs that if they made payments based on the promised low interest rate, no negative amortization would occur. FAC, ¶ 66. This, however, was not true, because Plaintiffs experienced negative amortization. FAC, ¶¶ 70, 95. Finally, Plaintiffs could not escape from the loans, because of harsh exit penalties. FAC, ¶ 19.

Plaintiffs have brought this civil action seeking compensatory, consequential, statutory, and punitive damages.

II. PROCEDURAL HISTORY

Plaintiff’s Class Action Complaint was filed on January 15, 2008. Thereafter, on February 29, 2008, Plaintiff filed her First Amended Class Action Complaint (“FAC”).

On March 13, 2008, Defendant AMERICAN STERLING BANK was served with the Summons and First Amended Complaint.

Defendant has not answered Plaintiff’s First Amended Complaint and on May 19, 2008, this Court entered Default on May 19, 2008 against Defendant AMERICAN STERLING BANK.

III. THIS COURT SHOULD GRANT PLAINTIFF LEAVE TO TAKE DISCOVERY

Fed.R.Civ.P. 26(f) limits parties from taking discovery prior to the initial case management conference. Here, since Defendant AMERICAN STERLING BANK has not answered or appeared in

1 this action, the initial case management conference has not occurred and therefore Plaintiff has been
 2 prevented from conducting discovery related to Plaintiff's individual and class claims.

3 Plaintiff is informed and believes that Defendant AMERICAN STERLING BANK sold or
 4 assigned Plaintiff's and the putative Class members' loans to other entities or persons who have liability
 5 under Plaintiff's individual and class claims. See Declaration of Marcus J. Jackson, ¶ 4. In particular,
 6 pursuant to 15 U.S.C. § 1641 "[a]ny person who purchases or is otherwise assigned a mortgage . . . shall
 7 be subject to all claims and defenses with respect to that mortgage that the consumer could assert against
 8 the creditor of the mortgage." Therefore, discovery related to the identity of each such subsequent
 9 purchaser or assignee of the ARM loans Defendant sold during the putative Class period is extremely
 10 relevant and necessary in order for Plaintiff to join these other parties to this action.

11 Plaintiff is also informed and believes that Defendant AMERICAN STERLING BANK's current
 12 or former corporate officers, executives and employees have, or are likely to have, information
 13 concerning: (1) the number of Option ARM loans Defendant sold to borrowers during the liability
 14 period; (2) the identity and location of such subsequent purchasers and/or assignees of the Option ARM
 15 loans Defendant sold during the liability period; and (3) the location of loan documents and other
 16 relevant information concerning Defendant's loan practices during the liability period.

17 Accordingly, Plaintiff respectfully requests that the Court grant Plaintiff's request for leave to
 18 take discovery from Defendant AMERICAN STERLING BANK's current or former corporate officers,
 19 executives and employees.

20 Respectfully submitted,

21 DATED: May 22, 2008

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